IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 26 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to hbe circulated to the civil judge ?

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UNILEC MFG. CO. AND ANOTHER
Versus
GUJARAT ELECTRICITY BOARD

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Appearance :
MR KB TRIVEDI, PARTY-IN-PERSON for the Petitioners
MR SN SINHA for the Respondent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 03/04/2007

ORAL JUDGMENT

1. Petitioners – original defendants in Summary Suit No.3394 of 2002 are before this Court being aggrieved by the order passed below Exh.53 dated 06.11.2006 by the learned Judge, Court No.8, Small Causes Court, Ahmedabad.

2. After the Gujarat Electricity Industries (Reorganization and Regulations) Act, 2003 came into being, Uttar Gujarat Vij Company Limited filed the aforesaid application Exh.53 in Summary Suit No.3394 of 2002 pending in the Small Causes Court, Ahmedabad for substitution of its name as plaintiff in place of Gujarat Electricity Board as it then existed.

The learned Judge after taking into consideration the rival submissions of the parties and taking into consideration in detail the submissions made by the present petitioners – defendants, allowed the application and permitted substitution. The said order is under challenge before this Court.

3. Mr.Krishnavadan B.Trivedi, sole proprietor of Unilec Mfg. Co. - defendant No.1 is heard at length. The Party-In-Person submitted that the order is bad in law inasmuch as, the order is without taking into consideration the decisions cited by him and is without taking into consideration the provision of Section 21 of the Limitation Act, 1963.

Party-In-Person submitted that vide Section 21 of the Limitation Act, where after institution of a suit new plaintiff or defendant is substituted or added, the suit as regards him is deemed to have been instituted when he

was so made a party. He submitted that present suit was filed in the year 1990 being Suit No.5889 of 1990 in the City Civil Court at Ahmedabad, which was later on transferred to the Small Causes Court, Ahmedabad in the year 2002 and was renumbered as Summary Suit No.3394 of 2002.

4. Party-In-Person also relied upon Sub-rule 5 of Rule 10 or Order 1 of the Civil Procedure Code contending that subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877) Section 22 (now Section 21 of the Limitation Act, 1963), the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons. The submission was that as the plaintiff was sought to be added only by Exh.53, which was filed on 09/10.01.2006, the suit is to be treated to have filed on that day and that being so, the suit is time barred for the reliefs claimed therein.

5. The submissions made by Party-In-Person are misconceived inasmuch as, present is not the case wherein the plaintiff of his own volition is getting substituted in place of old plaintiff. It is by operation of law, i.e. implementation of the Gujarat Electricity Industries (Reorganization and Regulations) Act, 2003 that the erstwhile Gujarat Electricity Board is

substituted by new entity. It goes without saying that if by an Act new entity is substituted in place of an old entity, the new entity gets into the shoes of old entity for all practical purposes. If the contention of Party-In-Person is accepted, that will give premium to dishonest persons, who do not want to contest the matter on merits and wants to get the suit dismissed on super hyper technicalities.

In view of the aforesaid discussion, the Court finds no substance in this revision application and it is dismissed. Rule is discharged.

(RAVI R.TRIPATHI, J.)

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